FILE COPY

IN THE

Supreme Court of the United States

October Term, 1959

No. 856

JOHN L. LEWIS, HENRY G. SCHMIDT AND JOSEPHINE ROCHE, AS TRUSTEES OF THE UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND OF 1950, *Petitioners*

v.

MIKE MYHALYK, *Respondent*

On Petition for Writ of Certiorari to the Supreme Court of Pennsylvania

PETITIONERS' REPLY BRIEF

JOHN J. WILSON
815 - 15th Street, N. W.
Washington 5, D. C.

A. E. KOONTZ
575 Union Trust Building
Pittsburgh 19, Pennsylvania

VAL J. MAYOR
907 - 15th Street, N. W.
Washington 5, D. C.

Attorneys for Petitioners

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

October Term, 1959

No. 856

JOHN L. LEWIS, HENRY G. SCHMIDT AND JOSEPHINE ROCHE, AS TRUSTEES OF THE UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND OF 1950, *Petitioners*

v.

MIKE MYHALYK, *Respondent*

On Petition for Writ of Certiorari to the Supreme Court of Pennsylvania

PETITIONERS' REPLY BRIEF

Respondent, in his Answer to Petition for Certiorari, contends that this Court should deny the petition upon the ground that petitioners failed to raise in the courts below the question presented here. Petitioners submit that respondent is in error.

The question presented to this Court by the petition is whether suits pertaining to the administration of an employees' welfare trust fund created pursuant to Section 302(c)(5) of the Labor Management Relations Act, 29 U.S.C. 186(c)(5), must be brought in the fed-

eral court in the District of Columbia, the situs of the instant Fund.

From the inception of this suit, petitioners have urged that suits pertaining to the administration of this Fund must be brought in the federal court at its situs. Thus, in its petition raising questions of jurisdiction, filed in the Courts of Common Pleas of Allegheny County, Pennsylvania, petitioners asserted that the instant Fund was a trust fund created by Section 302(e)(5), and that the suit by respondent must be brought in the court at the situs of the Fund, to wit, the federal court at Washington, D.C. (Paragraphs 4 and 5 of the Petition or Preliminary Objections Raising Only Questions of Jurisdiction; R. 17a, 19a-20a.)

The Court of Common Pleas nevertheless held that the instant Fund was subject to the jurisdiction of Pennsylvania courts as an unincorporated association. (Appendix, Pet. for Cert. pp. 1a-2a)

Petitioners renewed their contention[1] in the Supreme Court of Pennsylvania, stating at pages 30-31 of their brief:

> "We have seen that Congress intended to authorize the creation of welfare and retirement trusts subject to judicial supervision, similar to that exercised over other inter vivos trusts of movables, and that the law, regarding inter vivos trusts of movables, requires that they shall be administered only by the court at the situs of the trust. It, therefore, follows that Congress must have intended a trust created pursuant to the authority of the Act to be responsible in matters of administration only to the court at the trust's situs.

[1] Respondent clearly recognized this position, and urged the contrary view upon the Supreme Court of Pennsylvania. (See p. 11 of respondent's brief before the Supreme Court of Pennsylvania.)

"This interpretation is fortified by the express language of Section 302(c)(5) of the Act. (29 U.S.C. 186(c)(5). Congress anticipated possible 'deadlock on the administration of such fund(s)' among the trustees and provided for the appointment of a neutral to break such deadlocks 'by the district court of the United States for the district *where the trust fund has its principal office.*' (Emphasis supplied). This provision is without regard to the residence of the Trustees, the location of the trust res and the residence of any of the beneficiaries or potential beneficiaries. It may be concluded therefrom, that Congress evinced a legislative intent that a trust permitted under this statute should be dealt with as any other trust of movables, in that the court at its situs should be solely responsible for the judicial regulation of its administration.

"The logic in concluding that jurisdiction over the administration of the trust is limited to the court at the situs is apparent."

The Supreme Court of Pennsylvania recognized petitioners' contention, stating:

"'Appellants contend that the Fund is a trust, and, in view of Congress' ordination in the Labor-Management Act of 1947, supra, that a welfare fund be created and operated as a trust, the Pennsylvania courts must hold the Fund to be a trust; as a trust, the Fund and its trustees are not amenable to a writ of foreign attachment in Pennsylvania; * * *.'" (Appendix, Pet. for Cert. p. 6a)

However, that Court also held that the instant Fund was subject to foreign attachment under the laws of Pennsylvania, but upon the basis of being akin to a "foreign corporation or similar entity". (Appendix, Pet. for Cert. pp. 9a-10a)

Respondent's criticism thus actually runs, not to whether petitioners have raised below the question herein presented, but rather, that petitioners did not emphasize the interrelationship of the instant Fund to the overall national labor policy. Petitioners did stress the inherent interrelationship between the instant Fund and the Labor Management Relations Act, 1947, and the expansion in emphasis in this Court is easily explained. This Court, in its recent decision in *Lewis* v. *Benedict Coal Corporation* (October Term, 1959, No. 18, decided February 23, 1960), ... U.S. ..., 4 L. Ed. 2d 442, recognized that the instant Fund is a trust fund closely related to the collective bargaining agreements between the United Mine Workers of America and the bituminous coal operators, and that the national labor policy is an "important consideration" when viewing this Fund. However, the *Benedict* decision was not handed down by this Court until after this case had been submitted to the Supreme Court of Pennsylvania.

Respondent urges that this Court should not grant certiorari because the Pennsylvania courts did not pass upon the administration of the Fund in light of the national labor policy. It is clear that the Supreme Court of Pennsylvania was aware of these factors, but chose to ignore them. (Appendix, Pet. for Cert. p. 11a) Jurisdiction in this Court cannot be defeated by such a guise.

As this Court stated in *Grand River Dam Authority* v. *Grand Hydro* (1948) 335 U.S. 359, 369-70, 93 L. Ed. 64, 72:

> "* * * * fact that the state court purported to rest its decision largely on state law does not eliminate our duty to consider the question to the ex-

> tent that it arises under federal law. * * * It is, of course, for us to examine whether questions of federal law were necessarily, although only impliedly, adjudicated by the state court."

Again, in *Kiefer-Stewart Co.* v. *Seagram* (1951) 340 U.S. 211, 214, 95 L. Ed. 219, 224, this Court stated:

> "Respondents also seek to support the judgment of reversal on other grounds not passed on by the Court of Appeals but which have been argued here both orally and in the briefs. These grounds raise only issues of law not calling for examination or appraisal of evidence and we will consider them."

Plainly this petition is not premature, as claimed by respondent. The question of jurisdiction was naturally at the threshold, and was raised accordingly. (So it was in *Stampolis* v. *Lewis*, 359 U.S. 907, certiorari denied sub. nom. *Lewis* v. *Stampolis*, No. 594 October Term 1958.) It is entirely separated from the merits of the case—the right to receive a pension from the instant Fund.

The petition for certiorari should be granted.

Respectfully submitted,

JOHN J. WILSON
815 - 15th Street, N. W.
Washington 5, D. C.

A. E. KOUNTZ
575 Union Trust Building
Pittsburgh 19, Pennsylvania

VAL J. MITCH
907 - 15th Street, N. W.
Washington 5, D. C.

Attorneys for Petitioners

May, 1960.